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7  
8 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9  
10 *In re Capacitors Antitrust Litigation*

Case No. 3:14-CV-03264-JD

11  
12 **PLAINTIFF FLEXTRONICS'S INITIAL  
STATUS CONFERENCE STATEMENT**

13 This document relates to:

14 *Flextronics International USA, Inc. v. NEC  
TOKIN Corp. et al.*,  
Case No. 3:15-CV-02517-JD

**Hearing:**

Date: July 8, 2015

Time: 1:30 p.m.

Place: Courtroom 11, 19th Floor

Judge: Hon. James Donato

15  
16 Plaintiff FLEXTRONICS INTERNATIONAL USA, INC. ("Flextronics"), by and  
17 through counsel, respectfully submits this Status Conference Statement in advance of the  
18 Quarterly Status Conference set by the Court for Wednesday, July 8, 2015, at 1:30 p.m.

19 Flextronics, including through its subsidiaries, affiliates, and related entities, is among the  
20 largest direct purchasers of capacitors in the world. On June 5, 2015, Flextronics filed an  
21 individual, *i.e.* non-class, Complaint alleging a conspiracy to fix, maintain, stabilize or inflate the  
22 price of electrolytic and film capacitors (collectively, "capacitors").<sup>1</sup> See Complaint, Case No.

23  
24 <sup>1</sup> Flextronics's Complaint names the following Defendants: NEC TOKIN Corporation; NEC  
25 TOKIN America, Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-  
26 Con Corporation; Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi Chemical Co. America,  
27 Ltd.; Nichicon Corporation; FPCAP Electronics (Suzhou) Co., Ltd.; AVX Corporation; Rubycon  
28 Corporation; Rubycon America Inc.; ELNA Co., Ltd.; ELNA America Inc.; Matsuo Electric Co.,  
Ltd.; TOSHIN KOGYO Co., Ltd.; Holy Stone Enterprise Co., Ltd.; HolyStone International;  
ROHM Co., Ltd.; EPCOS AG; Okaya Electric Industries Co., Ltd.; Taitso Corporation; Taitso  
America, Inc.; Shinyei Kaisha; Nitsuko Electronics Corporation; Nissei Electric Co., Ltd.; and  
Soshin Electric Co., Ltd., ("Defendants").

1 5:15-cv-02517-JD, Dkt. 1. As described in Flextronics's Complaint, many of the alleged  
2 conspiratorial agreements and actions in furtherance of the conspiracy specifically targeted  
3 Flextronics. *See id.* at ¶¶ 156-67. On June 22, 2015, this Court entered an Order relating  
4 Flextronics's matter with this action. *See In re Capacitors Antitrust Litigation*, No. 3:14-CV-  
5 3264-JD, at Dkt. 751.

6 **1. Overall Case Management**

7 Courts overseeing multidistrict antitrust litigation that includes both class action and  
8 individual plaintiffs typically enter case management orders to set clear guidelines for the  
9 conduct of pre-trial litigation. Mindful of the Court's schedule in the Direct and Indirect  
10 Purchaser class actions, Flextronics has attempted (with varying degrees of success) to confer  
11 with Interim Lead Counsel for the Direct and Indirect Purchaser Classes and defense counsel to  
12 identify areas where appropriate coordination of discovery and other matters may minimize the  
13 burden on all parties and limit unduly duplicative discovery. Flextronics has either scheduled or  
14 proposed dates before July 15, 2015, for conferences to address these issues and proposes that  
15 the parties submit an agreed-upon proposed case management order following those conferences.  
16 To ensure the timely commencement of formal discovery, Flextronics respectfully asks that the  
17 Court order the parties to submit an agreed-upon proposed case management order no later than  
18 July 24, 2015.

19 **2. Service Issues**

20 On June 5, 2015, Flextronics requested that Defendants waive formal service of the  
21 Complaint. Defendants have agreed to do so in exchange for an extension of the time to file  
22 responsive pleadings until September 3, 2015. Flextronics respectfully requests that the Court  
23 endorse the parties' agreement on this issue.

24 **3. Discovery Schedule**

25 On June 9, 2015, Flextronics notified Defendants by letter that Flextronics sought  
26 production of certain categories of documents -- primarily documents already produced in the  
27 class action litigation -- as soon as practicable. Although no defendant has yet produced  
28 documents in response to this request, Flextronics and Defendants have agreed that the pre-

1 discovery conference required by Fed. R. Civ. P. 26 will take place on July 13, 2015.  
2 Flextronics offered several earlier dates for the conference that Defendants were unable to  
3 accommodate. Flextronics's overall view is that the parties should agree on a schedule that is  
4 sufficiently in accord with the schedule governing the Direct and Indirect Purchaser class actions  
5 that avoids unnecessary duplication of work, and that schedules Flextronics's action for trial no  
6 later than the class actions.<sup>2</sup> There is no scheduling dispute ripe for adjudication at this point.

#### 7 **4. Potential Waiver of Arbitration Claims**

8 On June 26, 2015, Flextronics was advised that certain defendants are concerned that  
9 Flextronics may have entered into contractual agreements to arbitrate the claims asserted in the  
10 Complaint. These defendants are thus hesitant to take any action in furtherance of litigation for  
11 fear of potentially waiving a right to compel arbitration. Following substantial investigation,  
12 Flextronics named as defendants only those conspirators with which we do not believe we have  
13 an arbitration agreement. Moreover, no defendant has yet identified any arbitration agreement  
14 that might arguably cover Flextronics's claim in this matter. Nevertheless, in an effort to avoid  
15 delay, Flextronics offered in writing on July 1, 2015, to agree that: (1) "no action taken by any  
16 defendant in this litigation through July 31, 2015, will constitute a waiver of any defendant's  
17 right to arbitrate claims with Flextronics;" and (2) we will consider later requests to arbitrate in  
18 good faith where arbitration will not cause additional expense or delay.

#### 19 **5. Applicability of Protective Order**

20 Beginning on June 19, 2015, Flextronics initiated discussions with Defendants and Class  
21 Counsel in order to proceed with discovery, including the production of documents already  
22 produced in the class action to date. Flextronics asked that the parties stipulate that the operative  
23 protective order in this action would also govern the production of those documents. Flextronics  
24 has received no response on this issue from Interim Class Counsel for the Direct Purchaser  
25 Plaintiffs. Defendants have indicated that they intend to renegotiate a separate protective order

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26 <sup>2</sup> It is entirely possible given the operation of Fed. R. Civ. P. 23(f) that Flextronics's case will be  
27 trial ready before either class action. Flextronics does not intend to suggest that its case should  
28 be consolidated with either class action case for trial or delayed until the conclusion of pre-trial  
proceedings

1 in conjunction with the July 13, 2015, Rule 26 conference.

2 Flextronics's position is that any delay associated with renegotiating the protective order  
3 is unwarranted because there already is a protective order in place that can easily be adapted to  
4 include Flextronics. Delay substantially prejudices Flextronics. Defendants have refused to  
5 provide any documents to Flextronics until a protective order is finalized, and Interim Lead  
6 Counsel for the Indirect Purchaser Class understandably has been reluctant to serve Flextronics  
7 with an unredacted version of their complaint prior to entry of a protective order.

8 Flextronics thus respectfully requests that this Court order that a stipulated proposed  
9 protective order be submitted to the Court for review and entry no later than July 24, 2015.

10  
11 Dated: July 7, 2015

FLEXTRONICS INTERNATIONAL USA, INC.

12  
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